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Computer System Engineering Ltd.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

CYBERSitter, LLC, a California
limited liability company, d/b/a Solid
Oak Software,

Plaintiff,

v.

The People's Republic of China, et al.,

Defendants.

Case No. CV10-0038 JST (SH)

**NOTICE OF MOTION AND MOTION
OF DEFENDANT ZHENGZHOU
JINHUI COMPUTER SYSTEM
ENGINEERING LTD. TO DISMISS
FOR LACK OF PERSONAL
JURISDICTION PURSUANT TO
RULE 12(b)(2); MEMORANDUM OF
POINTS AND AUTHORITIES**

*Filed concurrently with Declaration of
Huiqin Zhao, [Proposed] Order*

Hon. Josephine Stanton Tucker

Date: July 18, 2011

Time: 10 a.m.

Crtrm.: 10A

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TO ALL PARTIES AND TO THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT on July 18, 2011, at 10 a.m., or as soon thereafter as counsel may be heard, in the courtroom of the Honorable Josephine Stanton Tucker, located in the United States Courthouse, 411 West Fourth Street, Santa Ana, California 92701-4516, Defendant Zhengzhou Jinhui Computer System Engineering Ltd. ("Jinhui") will and hereby does move this Court to Dismiss for Lack of Personal Jurisdiction Pursuant to Federal Rule of Civil Procedure 12(b)(2).

This Motion is made upon the following grounds:

Jinhui does not do business, conduct activities, or have any presence whatsoever in California. Nor has Jinhui ever directed its activities toward California, let alone toward Plaintiff CYBERSitter, LLC ("CYBERSitter"). Moreover, exercising personal jurisdiction over Jinhui in the instant action would not comport with traditional notions of fair play and substantial justice.

This Motion is based on this Notice of Motion, the attached Memorandum of Points and Authorities, the Declaration of Huiqin Zhao filed concurrently herewith, all of the pleadings, files, and records in this proceeding, all other matters of which the Court may take judicial notice, and any argument or evidence that may be presented to or considered by the Court prior to its ruling.

This Motion is made following a conference of counsel, which occurred, pursuant to Local Rule 7-3, on Thursday, May 19, 2011.

Dated: June 10, 2011

Respectfully submitted,

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NOTICE OF MOTION AND MOTION OF DEFENDANT ZHENGZHOU JINHUI COMPUTER SYSTEM ENGINEERING LTD. TO DISMISS FOR LACK OF PERSONAL JURISDICTION PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 12(B)(2); MEMORANDUM OF POINTS AND AUTHORITIES

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Defendant Zhengzhou Jinhui Computer System Engineering Ltd. (“Jinhui”) is a Chinese corporation doing business in the Gaoxin District of the city of Zhengzhou, China. It does not do business, conduct activities, or have any presence whatsoever in California. Nor has Jinhui ever directed its activities toward California, let alone toward Plaintiff CYBERSitter, LLC (“CYBERSitter”). Moreover, Jinhui respectfully submits that, in any event, exercising personal jurisdiction over Jinhui in the instant action would not comport with traditional notions of fair play and substantial justice. Therefore, CYBERSitter’s claims against Jinhui should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(2), because Jinhui is not subject to personal jurisdiction in this Court.

CYBERSitter alleges in the First Amended Complaint (“FAC”) that Jinhui is subject to this Court’s jurisdiction because Jinhui “purposefully availed” itself of the benefits of this forum and that it did so in at least one of three ways: “by [1] doing business in this District, [2] by committing wrongful acts in whole or in part within the District, *and/or* [3] by committing wrongful acts which have had direct effects in this District.” FAC ¶ 10 (emphasis added)). These bare allegations, however, are contradicted by the facts. Jinhui has never done business in California, it has never engaged in tortious activity in California, and it has never directed its activities toward California. Indeed, CYBERSitter does not and cannot plead facts to support its conclusory jurisdictional allegations, because there *are no facts* to support them.

First, Jinhui does not “[do] business in this District.” Jinhui has never done business in California or elsewhere in the United States. Jinhui is located in and doing business exclusively within China. It has no presence in or contacts with the United States, much less California. For example, it has never had any offices,

1 employees, bank accounts, or sales in California, nor has Jinhui ever been registered
2 to do business in California. This is and always has been the case.

3 Second, contrary to Plaintiff's unsupported assertions, Jinhui has not engaged
4 in "wrongful acts in whole or in part within this District." FAC ¶ 10. Jinhui has
5 never been present in California and has not entered the state to commit wrongful
6 acts. Indeed, Plaintiff craftily pleads certain facts passively, disjunctively, and
7 without mention of Jinhui, to avoid the obvious fact that Jinhui conducts its business
8 in China, not in California. For example, Plaintiff alleges that its "Trade Secrets were
9 misappropriated from within the United States and/or downloaded from servers
10 within the United States." FAC ¶ 62. This assertion does not establish that Jinhui, a
11 Chinese company doing business wholly within China, has performed acts within
12 California sufficient to bestow this Court with personal jurisdiction over Jinhui.

13 Finally, Jinhui has never directed activities toward California, much less acted
14 intentionally to effect CYBERSitter's business in this state or elsewhere. The core of
15 CYBERSitter's jurisdictional argument is that Jinhui's alleged actions in China
16 affected CYBERSitter in California. To succeed on such an argument, CYBERSitter
17 must satisfy the requirements of the "effects test" set forth in *Calder v. Jones*, 465
18 U.S. 783 (1984), but CYBERSitter cannot do so. Specifically, CYBERSitter must
19 show that Jinhui committed intentional acts expressly aimed at California causing
20 harm to CYBERSitter that Jinhui knew was likely to be suffered in California. *See*
21 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 803 (9th Cir. 2004) (citing
22 *Calder*). Jinhui's activities with respect to the accused software were aimed at China,
23 not at California (or at anywhere else in the United States). Jinhui designed and
24 developed its software entirely within China for use in China in the Chinese language.
25 Moreover, Jinhui's websites—written almost entirely in Chinese and for the Chinese
26 market—are not directed at California, nor has Jinhui ever offered software on its
27 websites for download by Chinese consumers, much less by California consumers.

1 In sum, Jinhui neither has nor has ever had any effect on or activities in
2 California. Consequently, exercising personal jurisdiction over Jinhui would not
3 comport with “traditional notions of fair play and substantial justice” and would thus
4 be inconsistent with well-settled law. This is fatal to CYBERSitter’s claims against
5 Jinhui and warrants dismissal of those claims pursuant to Rule 12(b)(2).

6 **II. STATEMENT OF FACTS**

7 **A. Jinhui’s Activities Take Place Exclusively Within China**

8 Jinhui was established in 1997 and is in the business of developing dynamic
9 image-recognition software for standalone PC and network use in China for the
10 purpose of blocking access to pornographic Internet websites. *See* Declaration of
11 Huiqin Zhao (“Zhao Decl.”) ¶ 3.¹ Jinhui has operated an “Image Research Center”
12 since 2004, and holds three national invention patents in China directed towards
13 image-recognition technology, which were filed in 2005. *Id.* ¶ 3.

14 Jinhui’s principal place of business is in the Gaoxin District, Zhengzhou,
15 Henan Province, China. *Id.* ¶ 2. Jinhui is incorporated in China, and all of Jinhui’s
16 business activities, facilities, and employees are located in China. *Id.* ¶¶ 2, 4.

17 Jinhui operates two identical websites (at <http://www.zzjinhui.com> and
18 <http://www.filterdam.com>) (“Jinhui’s websites”), which are directed exclusively to
19 Internet users in China. *Id.* ¶ 5. Jinhui’s websites are written almost entirely in the
20 Chinese language (Simplified version), and there are no English-language versions of
21 the websites in existence. *Id.* ¶ 5(a). The server hosting Jinhui’s websites is located
22 in China, *id.* ¶ 5(b), and Jinhui has never made any of its products, or the Green Dam
23 Youth Escort program that is the subject of this lawsuit, available for download from
24

25 ¹ The Declaration of Huiqin Zhao is in Chinese (Mandarin) and is accompanied
26 by a certified translation and notarized translator’s certificate of accuracy, all of which
27 are filed concurrently herewith.

1 Jinhui's websites—not by an Internet user located in China, the United States, or
2 anywhere else in the world, *id.* ¶ 6.

3 **B. Jinhui Has Not Engaged In Any Activities In California**

4 Jinhui has conducted all of its business activities solely within China. Indeed,
5 Jinhui has never had any business presence or residence, office, mailing address,
6 telephone number, or telephone listing anywhere in the United States, much less in
7 California. Zhao Decl. ¶ 4. Jinhui has never been incorporated, registered, or
8 licensed to transact business anywhere in the United States, nor has it ever had any
9 officers, employees, or agents residing in the United States. *Id.* ¶¶ 4(a)–(b), (d).
10 Moreover, Jinhui has never owned or leased any assets, securities, real property, or
11 personal property of any nature anywhere in the United States, *id.* ¶ 4(e), nor is Jinhui
12 listed on any stock exchange in the United States, *id.* ¶ 4(k). Jinhui has never
13 maintained any bank accounts in the United States, *id.* ¶ 4(f), nor has Jinhui ever paid
14 (or been obligated to pay) taxes anywhere in the United States, *id.* ¶ 4(g).
15 Furthermore, Jinhui has never commenced any legal action or proceeding anywhere
16 in the United States, *id.* ¶ 4(h), has never sought to enforce any court orders in the
17 United States, *id.* ¶ 4(i), and has never designated anyone in the United States to
18 accept service of process on its behalf, *id.* ¶ 4(j). Indeed, Jinhui has not engaged in
19 any activities whatsoever in this country, much less in the state of California.

20 **C. Jinhui Has Not Targeted California**

21 Moreover, Jinhui has never targeted any of its business toward California or
22 anywhere else within the United States. Jinhui has never advertised any of its
23 software in any magazines, newspapers, trade journals, or other publications, or in the
24 broadcast media, in the United States. Zhao Decl. ¶ 4(l). As noted above, Jinhui's
25 software has never been downloadable from Jinhui's websites, let alone downloadable
26 by an Internet user located in the United States. *Id.* ¶ 6. In addition, Jinhui has never
27 owned, maintained, or leased any website servers located in the United States, nor

1 does it lease space from website hosting providers on servers that are physically
2 located anywhere in the United States. *Id.* ¶ 5(c)–(d). Jinhui’s websites have never
3 been directed toward California or anywhere else in the United States, nor do its
4 websites promote, or even attempt to promote, the transaction of business in the
5 United States in any way. *Id.* ¶ 5. In this connection, it warrants repeating that
6 Jinhui’s websites are written almost entirely in the Simplified Chinese language and
7 have never appeared in English. *Id.* ¶ 5(a). Finally, Jinhui does not own or operate
8 the Chinese government’s official Green Dam Youth Escort website, which is
9 referenced in paragraph 34 of the FAC. *Id.* ¶ 7.

10 In sum, Jinhui does not have and has never had any connection with, activities
11 in, or business directed towards the United States, let alone the state of California.

12 **III. ARGUMENT**

13 **A. CYBERSitter’s Claims Against Jinhui Should Be Dismissed** 14 **For Lack Of Personal Jurisdiction**

15 **1. CYBERSitter Cannot Satisfy Its Burden Of Proving That** 16 **Jinhui Is Subject To Personal Jurisdiction In This Court**

17 “Where, as here, there is no applicable federal statute governing personal
18 jurisdiction, the district court applies the law of the state in which the district court
19 sits.” *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 800 (9th Cir. 2004)
20 (citing Fed. R. Civ. P. 4(k)(1)(A)). “California’s long-arm jurisdictional statute is
21 coextensive with federal due process requirements.” *Love v. Associated Newspapers,*
22 *Ltd.*, 611 F.3d 601, 609 (9th Cir. 2010) (citing Cal. Code Civ. Pro. § 410.10). To be
23 consistent with due process, a court’s exercise of personal jurisdiction over a party
24 must satisfy the requirements of either general or specific jurisdiction. *See*
25 *Helicopteros Nacionales de Colombia v. Hall*, 466 U.S. 408, 414 n. 8–9 (1984).
26 General jurisdiction exists if a defendant has “continuous and systematic general
27 business contacts,” *id.* at 416, which “approximate physical presence in the forum

1 state”, *Schwarzenegger*, 374 F.3d at 801. Specific jurisdiction, by contrast, requires a
2 showing that (1) the non-resident defendant established sufficient “minimum
3 contacts” with the forum state by either “purposefully direct[ing] his activities” to the
4 forum or “purposefully avail[ing] himself of the privilege of conducting activities in
5 the forum,” (2) the plaintiff’s claims arise out of the defendant’s forum-related
6 contacts, and (3) the court’s exercise of personal jurisdiction comports with
7 traditional notions of “fair play and substantial justice.” *Id.* at 802; *see also Burger*
8 *King v. Rudzewicz*, 471 U.S. 462, 476–78 (1985).

9 When a defendant seeks dismissal for lack of personal jurisdiction pursuant to
10 Rule 12(b)(2), the party seeking to establish jurisdiction “bears the burden of
11 demonstrating that the court has jurisdiction over the defendant.” *Menken v. Emm*,
12 503 F.3d 1050, 1056 (9th Cir. 2007); *see also Love*, 611 F.3d at 608 (stating same
13 principle). To meet this burden, “a plaintiff must allege specific acts connecting
14 defendant with the forum.” *Greenspun v. Del E. Webb Corp.*, 634 F.2d 1204, 1208
15 n.5 (9th Cir. 1980). In other words, the plaintiff must make at least “a *prima facie*
16 showing of jurisdictional facts” by affidavits or otherwise and cannot “simply rest on
17 the bare allegations of its complaint.” *Schwarzenegger*, 374 F.3d at 800 (internal
18 quotation marks omitted).

19 **2. CYBERsitter Cannot Demonstrate General Jurisdiction**
20 **Because Jinhui Does Not Have Continuous And Systematic**
21 **Contacts With California**

22 General jurisdiction over a non-resident defendant requires evidence that its
23 contacts with the forum are so “substantial” or “continuous and systematic” that they
24 “approximate physical presence in the forum.” *Bancroft & Masters, Inc. v. August*
25 *Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000). This “is an exacting standard,”
26 *Schwarzenegger*, 374 F.3d at 801, and to determine if a defendant’s activities satisfy
27 this standard, courts must “examine all of the defendant’s activities that impact the

1 state, including whether the defendant makes sales, solicits or engages in business,
2 serves the state's markets, designates an agent for service of process, holds a license,
3 has employees, or is incorporated there," *Hirsch v. Blue Cross, Blue Shield of Kansas*
4 *City*, 800 F.2d 1474, 1478 (9th Cir. 1986).

5 In paragraph 10 of the First Amended Complaint (which is the sole paragraph
6 in which CYBERSitter sets forth allegations purporting to support this Court's
7 personal jurisdiction over Jinhui), CYBERSitter groups Jinhui together with the
8 People's Republic of China and Beijing Dazheng Human Language Technology
9 Academy Ltd. and alleges globally that "they have purposefully availed themselves of
10 the benefits of this forum [1] by doing business in this District, [2] by committing
11 wrongful acts in whole or in part within this District, and/or [3] by committing
12 wrongful acts which have had direct effects in this District." FAC ¶ 10. Because
13 CYBERSitter has stated these conclusory allegations in the disjunctive and failed to
14 identify which of these purported jurisdictional bases apply to which of the three
15 defendants, CYBERSitter's theory of personal jurisdiction with respect to Jinhui is
16 wholly unclear. In any event, even if all of the three putative jurisdictional grounds
17 are interpreted to be alleged as to Jinhui, all of them are insufficient to confer general
18 jurisdiction.

19 With respect to the allegation that Jinhui availed itself to the jurisdiction of this
20 Court by "doing business in the District," as explained in detail in section II, *supra*,
21 such an allegation is patently untrue, as Jinhui does not do any business in California
22 whatsoever, much less the type of "continuous and systematic" business required for
23 general personal jurisdiction. *See Bancroft & Masters*, 223 F.3d at 1086 (explaining
24 that even "engaging in commerce with residents of the forum state is not in and of
25 itself the kind of activity that approximates physical presence with the state's
26 borders"). In fact, all of Jinhui's business activities occur exclusively within China,
27 and Jinhui has never targeted its business toward, nor does it have any business

1 presence or residence in, California. *See* Zhao Decl. ¶ 4. Likewise, as to the second
2 and third purported bases for jurisdiction—i.e., that Jinhui committed “wrongful acts”
3 in California or its conduct had “direct effects” in California—even if they were true
4 (which they are not), both are insufficient as a matter of law to confer general
5 jurisdiction. *Cf. Schwarzenegger*, 374 F.3d at 801 (holding that contracting to do
6 business with California entities and maintaining “an Internet website accessible by
7 anyone capable of using the Internet, including people living in California,” “fall well
8 short” of constituting “sufficient presence to warrant general jurisdiction” (internal
9 quotation marks omitted)).

10 In sum, there are no facts to support a theory of general jurisdiction over Jinhui
11 in this Court, nor has CYBERSitter even pleaded any such facts.

12 **3. CYBERSitter Cannot Demonstrate That This Court Has**
13 **Specific Jurisdiction Over Jinhui**

14 As set forth above, specific jurisdiction is proper over a non-resident defendant
15 only if the plaintiff satisfies the following three-prong test: (1) the defendant must
16 have established sufficient “minimum contacts” with the forum state by either
17 “purposefully avail[ing] himself of the privilege of conducting activities in the forum”
18 or “purposefully direct[ing] his activities” to the forum; (2) the plaintiff’s claims must
19 arise out of the defendant’s forum-related contacts; *and* (3) the court’s exercise of
20 personal jurisdiction must comport with traditional notions of “fair play and
21 substantial justice.” *Schwarzenegger*, 374 F.3d at 802. CYBERSitter cannot satisfy
22 *any* of these requirements with respect to Jinhui.

23 (a) **Jinhui Did Not Purposefully Avail Itself Of The Privilege**
24 **Of Conducting Activities In California, Nor Did It**
25 **Purposefully Direct Its Activities To California**

26 As a preliminary matter, CYBERSitter alleges (in conclusory terms) that Jinhui
27 both “purposefully availed” itself of the benefits of California by doing business in

1 the state and committed acts that had “direct effects” in California. FAC ¶ 10. While
2 courts “sometime use the phrase ‘purposeful availment’ to include both purposeful
3 availment and direction, availment and direction are, in fact, two distinct concepts.”
4 *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1155 (9th Cir. 2006) (internal quotation
5 marks omitted). Moreover, “[e]vidence of availment is typically action taking place
6 in the forum that invokes the benefits and protections of the laws in the forum,” *id.*,
7 “such as executing or performing a contract there,” *Schwarzenegger*, 374 F.3d at 802.
8 In contrast, “[e]vidence of direction generally consists of action taking place outside
9 the forum that is directed at the forum.” *Pebble Beach*, 453 F.3d at 1155.

10 The FAC is conspicuously devoid of any factual allegations that Jinhui
11 “purposefully availed” itself of the laws of California—not by Jinhui doing business
12 in California and not by Jinhui otherwise “invoking the benefits of its laws” in any
13 manner, much less in a manner sufficient to satisfy the requirements of due process.
14 This is not surprising, because Jinhui has not engaged in any activities whatsoever in
15 the United States, much less in the state of California. *See generally* section II, *supra*.
16 Therefore, CYBERSitter’s naked allegation that Jinhui is subject to this Court’s
17 jurisdiction based on a “purposeful availment” theory is wholly unsupportable and
18 plainly belied by the facts. Furthermore, as the Ninth Circuit has repeatedly held, “[a]
19 purposeful availment analysis is most often used in suits sounding in contract. A
20 purposeful direction analysis, on the other hand, is most often used in suits sounding
21 in tort.” *Schwarzenegger*, at 802. This is a tort suit. Thus, “purposeful direction”
22 analysis, not “purposeful availment” analysis, provides the relevant framework for the
23 jurisdictional inquiry.

24 Nevertheless, CYBERSitter does not and cannot satisfy its *prima facie* burden
25 of proving that Jinhui has “purposefully directed” its activities to California. While
26 CYBERSitter offers the legal conclusion that Jinhui “committ[ed] wrongful acts in
27 whole or in part” in California that “had direct effects” in this state, FAC ¶ 10,

1 CYBERSitter has failed to allege any facts to support that conclusion—nor could it do
2 so.

3 To demonstrate personal jurisdiction based on a theory of “purposeful
4 direction,” CYBERSitter must satisfy the three-prong “effects” test set forth in the
5 seminal case of *Calder v. Jones*, 465 U.S. 783 (1984). “The effects test is satisfied if
6 (1) the defendant committed an intentional act; (2) the act was expressly aimed at the
7 forum state; and (3) the act caused harm that the defendant knew was likely to be
8 suffered in the forum state.” *Love*, 611 F.3d at 609. CYBERSitter has not alleged
9 facts to support the assertion that Jinhui committed an intentional act expressly aimed
10 at California, or that Jinhui caused harm that Jinhui knew was likely to be suffered in
11 California.

12 The gravamen of CYBERSitter’s First Amended Complaint is that Jinhui,
13 among other defendants, copied portions of CYBERSitter’s programming code and
14 incorporated that code into the Green Dam Youth Escort software. *See, e.g.*, FAC ¶¶
15 1, 5–8, 40–42. Even if the Court were to accept these allegations as true for purposes
16 of the instant motion, these allegations do not demonstrate that Jinhui performed any
17 act *within California*. On the contrary, by CYBERSitter’s own admission, its software
18 is available “worldwide,” including within China. FAC ¶ 27. Thus, even if the Court
19 were to assume, *arguendo*, that CYBERSitter’s software had been improperly copied
20 to develop the Green Dam Youth Escort program, the FAC contains no allegation that
21 such copying actually occurred within the United States, much less within California.
22 In fact, the FAC critically omits any allegation that CYBERSitter *even has* servers
23 located in California, let alone that Jinhui accessed any such servers and copied
24 CYBERSitter’s alleged property by doing so. Furthermore, CYBERSitter also alleges
25 that its “Trade Secrets were taken from within the United States and/or *downloaded*
26 *from servers within the United States*,” FAC ¶¶ 62, 73, which, at a minimum, suggests
27 that CYBERSitter’s servers may be located outside of California.

1 What is more, Jinhui is never specifically alleged to have accessed those
2 servers, let alone to have done so intentionally—even if the servers were alleged to be
3 located in California. In fact, the only specific allegations in the FAC regarding
4 CYBERSitter’s servers are set forth in paragraphs 47 and 48, in which CYBERSitter
5 avers that some unknown person(s) or entity(ies)—possibly originating “from within
6 the PRC Ministry of Health”—attempted to gain access to its “computers and servers
7 originating from within China.” Jinhui is not even mentioned in those paragraphs.

8 Thus, CYBERSitter has not stated any facts sufficient to satisfy either of the
9 first two prongs of the *Calder* “effects” test—viz., that Jinhui committed an
10 intentional act expressly aimed at California. In this regard, the Ninth Circuit has
11 cautioned that *Calder* “cannot stand for the broad proposition that a foreign act with
12 foreseeable effects in the forum state always gives rise to specific jurisdiction. . . .
13 [T]here must be ‘something more.’” *Bancroft & Masters*, 223 F.3d at 1087.

14 Courts have generally only found the “something more” sufficient to convey
15 jurisdiction where the alleged harm was to an individual, rather than a company, and
16 the allegedly wrongful acts were specifically directed at harming that individual in the
17 state. *See, e.g., Calder*, 465 U.S. 783 (Florida defendants authored article in Florida
18 libeling individual plaintiff known to reside in California, which was published in
19 national magazine widely circulated in California); *Sinatra v. Nat’l Enquirer, Inc.*,
20 854 F.2d 1191 (9th Cir. 1988) (Swiss clinic made libelous statements alleging
21 individual plaintiff known to reside in California was a patient there, which were
22 published in national magazine widely circulated in California, in order to benefit the
23 clinic through the implied endorsement of plaintiff and bolster its already significant
24 advertising efforts in California, from which many of its patients came); *Brainerd v.*
25 *Governors of the Univ. of Alberta*, 873 F.2d 1257 (9th Cir. 1989) (Canadian residents,
26 in response to telephone calls directed to them in Canada, made statements defaming
27 a person they knew resided in Arizona; such conduct was not “untargeted negligence”

1 but rather was “performed for the very purpose of having their consequences felt in
2 the forum state”); *Metropolitan Life Ins. Co. v. Neaves*, 912 F.2d 1062 (9th Cir. 1990)
3 (regarding fraudulent submission of a claim to insurance proceeds to the detriment of
4 a known individual co-beneficiary who is a California resident, stating “When
5 [defendant] addressed the envelope to Metropolitan, she was purposefully defrauding
6 [plaintiff] in California”). To be sure, the *Calder* “effects” test has been found to be
7 satisfied in some situations where a defendant targets a corporation with its principal
8 place of business in the forum. *See, e.g., Panavision Int’l, L.P. v. Toeppen*, 141 F.3d
9 1316, 1322 (9th Cir. 1998) (cyber-squatter targeted California by registering
10 Panavision’s domain name and then demanding payment from Panavision in
11 exchange for transferring the domain name to Panavision); *Bancroft & Masters*, 223
12 F.3d at 1087 (Georgia defendant sent letter to Virginia domain name registrar
13 contesting California plaintiff corporation’s use of certain domain name, which was
14 held to intentionally and “individually target” the California corporation since the
15 effects of the letter were primarily felt, as defendant knew they would be, in
16 California); *Rio Props., Inc. v. Rio Int’l Interlink*, 284 F.3d 1007, 1020 (9th Cir. 2002)
17 (Costa-Rica based Internet gambling website “specifically targeted consumers in
18 Nevada by running radio and print advertisements in Las Vegas” where plaintiff’s Rio
19 hotel-casino was located); *Mattel, Inc. v. MCA Records, Inc.*, 296 F.3d 894, 899 (9th
20 Cir. 2002) (defendant distributed its pop music albums in California).

21 In contrast to each of the above-cited authorities, there are no allegations—let
22 alone any evidence—that Jinhui targeted CYBERSitter in California. In other words,
23 here the “something more” required under well-established Ninth Circuit precedent is
24 demonstrably lacking in this case. *Bancroft & Masters*, 223 F.3d at 1087; *see also*
25 Zhao. Decl. ¶¶ 3, 5 (explaining that the “primary audience” of the Green Dam
26 initiative was “not [users in] America at all but, instead, residents of [China]”); *Love*,
27 611 F.3d at 609 (“Where a defendant’s express aim was local, the fact that it caused

1 harm to the plaintiff in the forum state, even if the defendant knew that the plaintiff
2 lived in the forum state, is insufficient to satisfy the effects test.” (internal quotation
3 marks omitted)); *Toys “R” Us, Inc. v. Step Two, S.A.*, 318 F.3d 446, 454 (3d Cir.
4 2003) (finding that websites of online merchant located in Spain, which “are entirely
5 in Spanish,” quoted prices in pesetas or Euros, not U.S. dollars, and which did not
6 enable entry of U.S. addresses, were did not sufficiently target New Jersey to
7 establish personal jurisdiction over online merchant in that forum); *Yash Raj Films*
8 *(USA) Inc. v. Dishant.com LLC*, 2009 WL 4891764, at *9–10 (E.D.N.Y. Dec. 15,
9 2009) (finding that non-resident defendant that made available on its website works
10 copyrighted by New York plaintiff did not sufficiently target New York, as it was
11 clear that website’s primary target was an international audience).

12 The closest CYBERSitter comes to alleging facts sufficient to show that Jinhui
13 actually targeted CYBERSitter in California is in paragraph 34, where CYBERSitter
14 avers that the “Chinese government’s official Green Dam site contains or contained
15 links targeting users in ‘San Francisco’ and ‘New York’—the locations of the two
16 largest Chinese-speaking populations in the United States.” FAC ¶ 34. This assertion
17 simply does not apply to Jinhui. Jinhui does not own or operate “the official Green
18 Dam site,” Zhao Decl. ¶ 7, nor does it sell or offer for download the Green Dam
19 Youth Escort software or any other software on its own websites, *id.* ¶¶ 6(b), 7.

20 (b) **Cybersitter’s Claims Against Jinhui Do Not Arise Out**
21 **Of Any Forum-Related Activities**

22 In order for specific jurisdiction in this District to be proper, not only must
23 CYBERSitter show purposeful availment or purposeful direction, CYBERSitter’s
24 “claim must [also] be one which arises out of or relates to the defendant’s forum-
25 related activities.” *Schwarzenegger*, 374 F.3d at 802. In other words, the claims
26 against Jinhui must have a nexus with Jinhui’s alleged conduct within California. *See*
27 *Allstar Mktg. Group, LLC v. Your Store Online, LLC*, 666 F. Supp. 2d 1109, 1123

(C.D. Cal. 2009) (“A lawsuit arises out of a defendant's contacts with the forum state if there is a direct nexus between the cause of action being asserted and the defendant's activities in the forum.”). As discussed above, Jinhui does not have and never has had any activities in California or that relate to California in any way. *See generally* sections II, III.A.3.a, *supra*. Therefore, CYBERSitter plainly cannot satisfy this requirement.

4. The Exercise Of Specific Jurisdiction Over Jinhui Would Not Be Reasonable

Finally, as noted above, even if CYBERSitter could satisfy the purposeful direction and forum-nexus requirements (it cannot), the exercise of specific jurisdiction by this Court over Jinhui in any event must be reasonable. In this regard, the Ninth Circuit has explained:

The law of personal jurisdiction . . . is asymmetrical. The primary concern is for the burden on a defendant. If the burdens of trial are too great for a plaintiff, the plaintiff can decide not to sue or, perhaps, to sue elsewhere. A defendant has no such luxury. The burdens on a defendant are of particular significance if, as here, the defendant has done little to reach out to the forum state.”

Ins. Co. of N. Am. v. Marina Salina Cruz, 649 F.2d 1266, 1272 (9th Cir. 1981). The Supreme Court has similarly explained that the “unique burdens placed upon one who must defend oneself in a foreign legal system should have significant weight in assessing the reasonableness of stretching the long arm of personal jurisdiction over national borders.” *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 114 (1987).

With these principles in hand, in evaluating whether the exercise of personal jurisdiction over a particular defendant would be reasonable, the Ninth Circuit considers: “(1) the extent of . . . purposeful injection into the forum state’s affairs; (2) the burden on the defendant of defending in the forum; (3) the extent of conflict with the sovereignty of the defendant’s state; (4) the forum state’s interest in adjudicating

1 the dispute; (5) the most efficient judicial resolution of the controversy; (6) the
2 importance of the forum to the plaintiff's interest in convenient and effective relief;
3 and (7) the existence of an alternative forum." *Dole Food Co. v. Watts*, 303 F.3d
4 1104, 1114 (9th Cir. 2002).

5 Here, Jinhui has not purposefully injected itself into the forum state's affairs. It
6 is a Chinese company doing business in China for the Chinese market. In a similar
7 vein, the burden of defending an action in this Court is readily apparent: Jinhui and
8 its employees live and work in China, not in California, and trial in this Court would
9 require Jinhui to transport and provide accommodations and meals for numerous fact
10 witnesses from China to California, each of whom would need to obtain a visa and
11 who collectively would need interpreters to give testimony about events which
12 occurred entirely within China.

13 Moreover, Jinhui respectfully submits that California would have little interest
14 in adjudicating a case where CYBERSitter seeks to have this Court adjudicate claims
15 pertaining to the distribution of software made pursuant to a foreign government
16 program, which occurred in foreign countries, and is alleged to be actionable under
17 numerous foreign laws. As noted above, in view of the Supreme Court's directive
18 that the "unique burdens placed upon one who must defend oneself in a foreign legal
19 system should have significant weight in assessing the reasonableness of stretching
20 the long-arm of personal jurisdiction over national borders," *Asahi*, 480 U.S. at 114,
21 and in view of the palpable burdens on Jinhui in this particular case, Jinhui
22 respectfully submits that it would be highly unreasonable to subject Jinhui to the
23 personal jurisdiction of this Court.

1 **IV. CONCLUSION**

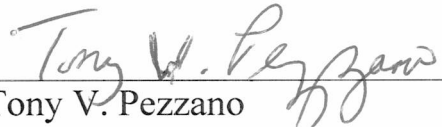
2 For the foregoing reasons, CYBERSitter's claims against Jinhui should be
3 dismissed for lack of personal jurisdiction, pursuant to Federal Rule of Civil
4 Procedure 12(b)(2).

5 Dated: June 10, 2011

Respectfully submitted,

6 CADWALADER WICKERSHAM & TAFT
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8
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